

EXHIBIT 4

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7 Samuel A. Schwartz, Esq.
8 Nevada Bar No. 10985
9 saschwartz@nvfirm.com
10 Gabrielle A. Hamm, Esq.
11 Nevada Bar No. 11588
12 ghamm@nvfirm.com
13 SCHWARTZ LAW, PLLC
14 601 East Bridger Avenue
15 Las Vegas, NV 89101
16 Telephone: 702.385.5544
17 Facsimile: 702.442.9887

14 | Proposed Attorneys for the Debtors

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

17 | In re:

Case No.: 23-15619-hlb

18 | RAWHIDE MINING LLC,

Chapter 11

Debtor.

Proposed Joint Administration with:

Affects All Debtors



Affects Rawhide Mining LLC



23 Affects Rawhide Acquisition Holding LLC



Hearing Date:

Hearing Date:
Hearing Time:

1 **THIS CAUSE** came before the Court on _____, 2024 (the “**Final Hearing**”) upon
 2 the motion, dated December ___, 2023 [ECF No __] (the “**Motion**”),¹ of Rawhide Mining LLC
 3 (“**Rawhide**”) and Rawhide Acquisition Holding LLC (“**Holding**” and, together with Rawhide, the
 4 “**Debtors**”), as debtors and debtors-in-possession in the above-captioned Chapter 11 cases (the
 5 “**Chapter 11 Case**”) for interim and final orders under Sections² 105, 361, 362, 363, 364(c)(1),
 6 364(c)(2), 364(d)(1) of the Bankruptcy Code, and Rules 2002, 4001, 6004 and 9014 of the Bankruptcy
 7 Rules, and Rules 2002, 4001, 6004, 9006, and 9014 of the Local Rules, seeking:

8 (a) authorization for the Borrower to obtain up to \$2,500,000 in principal amount of
 9 postpetition financing (plus any interest capitalized and added to such principal amount),
 10 (collectively, the “**DIP Financing**”), all on the terms and conditions set forth in: (i) the Interim Order
 11 (defined below); (ii) this final order approving the Motion on a final basis (this “**Final Order**”); (iii)
 12 that certain Debtor-In-Possession Loan Agreement (the “**DIP Facility Agreement**”) by and between
 13 the Debtors and De Jong Capital, LLC, a Delaware limited liability company (the “DIP Lender”); and
 14 (iv) the budget annexed hereto as **Exhibit A** (the “**Budget**”, and together with the DIP Facility
 15 Agreement, all as amended, supplemented or otherwise modified from time to time in accordance
 16 with the terms hereof and thereof, and all other agreements, documents, instruments, and/or
 17 amendments delivered in connection therewith, the “**DIP Documents**”);

18 (b) authorization for the Debtors to execute and deliver the DIP Documents and to perform
 19 such other and further acts as may be necessary or appropriate in connection therewith;

20 (c) authorization for the Debtors to use the proceeds from the DIP Financing as permitted
 21 in the DIP Documents and in accordance with the Interim Order, this Final Order, and the Budget;
 22 and

23
 24 ¹ Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the
 25 Motion.

26 ² Unless otherwise stated, all references to “**Section**” herein shall be to title 11 of the U.S. Code
 27 (the “**Bankruptcy Code**”); all references to a “**Bankruptcy Rule**” shall refer to the Federal Rules of Bankruptcy
 Procedure; and all references to a “**Local Rule**” or “**LR**” shall refer to the Local Rules of Bankruptcy Practice of
 the U.S. District Court for the District of Nevada.

1 (d) authorization for the Debtors to grant adequate protection to its prepetition lender to
2 the extent of any diminution in value of its collateral, as applicable, and in each case subject and
3 subordinate to the Carve-Out.

4 The Final Hearing having been held by the Court to consider the relief sought in the Motion,
5 and upon the record of the Final Hearing and after due deliberation and consideration and sufficient
6 cause appearing therefor;

7 **IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED**, that:

8 1. *Disposition.* The Motion is granted on a final basis in accordance with the terms of
9 this Final Order. Any objections to the final relief sought in the Motion with respect to the entry of
10 this Final Order that have not been previously withdrawn, waived or settled, and all reservations of
11 rights included therein, are hereby denied and overruled.

12 2. *Jurisdiction and Venue.* This Court has core jurisdiction over the Chapter 11 Cases
13 commenced on December 20, 2023 (the “**Petition Date**”), the Motion, and the parties and property
14 affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant
15 to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105,
16 361, 362, 363, 364, and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, and 6004
17 and the Local Bankruptcy Rules.

18 3. *Notice.* Notice of the Motion, the relief requested therein and the relief sought at the
19 Interim Hearing was served by the Debtor by either electronic mail and/or overnight mail to: (a) the
20 Office of the United States Trustee, 300 Las Vegas Boulevard S., Suite 4300, Las Vegas, NV 89101,
21 Attn: Edward M. McDonald, Jr.; (b) the creditors holding the twenty largest unsecured claims against
22 the Debtor’s estate; (c) the prepetition secured lender to the Debtor and its counsel; (d) the DIP Lender
23 and its counsel; (e) all other creditors asserting secured claims against Debtor’s estate; (f) governmental agencies required to receive notice under Bankruptcy Rule 5003(e); and (g) those
24 parties requesting special notice pursuant to Bankruptcy Rule 2002. Under the circumstances, the
25 notice given by the Debtors of the Motion, the relief requested therein and the Interim Hearing
26 constitutes appropriate, due and sufficient notice thereof, complies with Bankruptcy Rules 4001(b)
27 and (c) and the Local Bankruptcy Rules, and no further notice of the relief sought at the Interim
28

1 Hearing and the relief granted herein is necessary or required.

2 4. *Findings Regarding the DIP Financing.*

3 (a) Good and sufficient cause has been shown for the entry of this Final Order.

4 (b) The Debtors have an immediate need to obtain the DIP Financing to preserve
5 their assets, including to pay insurance, taxes and payroll. The Debtors' access to and use of
6 the proceeds of the DIP Financing is necessary and vital to ensure that the Debtors have
7 sufficient working capital and liquidity to preserve and maintain the value of their estates, and
8 to facilitate a reorganization of the Debtors or a sale of the Debtors' assets.

9 (c) The Debtors are unable to obtain financing on more favorable terms from
10 sources other than the DIP Lender pursuant to, and for the purposes set forth in, the DIP
11 Documents and is unable to obtain adequate unsecured credit allowable under section 503(b)(1)
12 of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain
13 secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy
14 Code for the purposes set forth in the DIP Documents without the Debtor granting the DIP
15 Liens (as defined in paragraph 8 below) and the DIP Superpriority Claims (as defined below)
16 under the terms and conditions set forth in this Final Order and the DIP Documents.

17 (d) The terms of the DIP Documents pursuant to this Final Order are fair and
18 reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their
19 fiduciary duties and constitute reasonably equivalent value and fair consideration.

20 (e) The DIP Documents and the DIP Financing have been the subject of extensive
21 negotiations conducted in good faith and at arms'-length among the Debtors and the DIP
22 Lender, and all of the Debtors' obligations and indebtedness arising under or in connection with
23 the DIP Financing, including, without limitation, (i) all loans made to the Debtors pursuant to
24 the DIP Documents and (ii) all other obligations of the Debtors under the DIP Documents or
25 this Final Order owing to the DIP Lender (collectively, the "**DIP Obligations**"), shall be
26 deemed to have been extended by the DIP Lender and its affiliates in "good faith", as such term
27 is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections
28 set forth therein, and shall be entitled to the full protection of section 364(e) of the Bankruptcy

Code in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) Absent granting the relief sought by this Final Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Financing in accordance with the terms of this Final Order and the DIP Documents is therefore in the best interest of the Debtors' estates and is consistent with the Debtors' exercise of their fiduciary duties.

5. Authorization of the DIP Financing and the DIP Documents.

(a) After a hearing held on _____, 2023, this Court entered its *Interim Order Under Bankruptcy Code Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(d)(1) and 364(e) and Bankruptcy Rules 2002, 4001, 6004 and 9014 (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Grant Adequate Protection and (II) Scheduling Final Hearing* [ECF No. ___](the “**Interim Order**”) on _____, 2023, authorizing the Debtors to execute, enter into and perform under the DIP Documents and borrow up to an aggregate principal amount of \$960,000 (plus interest, including any interest capitalized and added to such principal amount, fees and other expenses provided for in the DIP Documents) on an interim basis.

(b) The Debtors are now hereby authorized to borrow up to an aggregate principal amount of \$2,500,000 (plus interest, including any interest capitalized and added to such principal amount, fees and other expenses provided for in the DIP Documents), all of the foregoing in accordance with the terms of this Final Order, the DIP Note and the other DIP Documents. All of the amounts borrowed shall be used solely for the purposes permitted under this Final Order, the DIP Note and the other DIP Documents and in accordance with the Budget.

(c) In furtherance of the foregoing and without further approval of this Court, the Debtors are authorized and directed to perform all acts and to execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements) and to pay all reasonable fees and expenses that the DIP Lender incurs in connection with the preparation, execution and delivery of the DIP Documents, or the Debtors' performance of their obligations under the DIP

Documents and the DIP Financing, including without limitation:

- (i) the execution, delivery and performance of the DIP Documents;
- (ii) the execution, delivery and performance of one or more amendments, consents or other modifications to and under the DIP Documents, in this case in form as the Debtor and the DIP Lender may agree, and no further approval of court shall be required for amendments, waivers, consents or other modifications under the DIP Documents (and any fees paid in connection therewith) unless amendments, waivers, consents or other modifications are material; and
- (iii) the performance of all other acts required under or in connection with the DIP Documents.

(d) Upon execution and delivery of the DIP Documents, the DIP Documents (other than the Guarantees) shall constitute valid, binding and non-avoidable obligations of the Debtors, enforceable against the Debtors in accordance with the terms of this Final Order and the DIP Documents. No obligation, payment, transfer or grant of security under the DIP Documents or this Final Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law (including without limitation, under sections 502(d), 548 or 549 of the Bankruptcy Code or under any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

6. *DIP Superpriority Claims.* Subject to the Carve-Out (as defined below), pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed senior administrative expense claims (the “**DIP Superpriority Claims**”) against the Debtors with priority over any and all administrative expenses and all other claims against each the Debtors, now existing or hereafter arising, of any kind whatsoever, including without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment,

which allowed claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtor all proceeds thereof, excluding, however, causes of action under chapter 5 of the Bankruptcy Code and the proceeds thereof (collectively, “**Avoidance Actions**”). For the avoidance of doubt, any recovery on account of the DIP Superpriority Claims shall be paid (i) first from Cash, (ii) second from proceeds of Collateral other than commercial tort claims and other litigation claims (collectively, “**Litigation Claims**”); and (iii) third from Litigation Claims (the “**DIP Superpriority Waterfall**”). Notwithstanding the DIP Superpriority Waterfall, following the occurrence of an Event of Default and subject to the provisions this Final Order, until the DIP Obligations are paid in full, in cash, the Debtors and the estates shall reserve for the full amount of the DIP Obligations and shall not disburse any proceeds (other than Avoidance Action proceeds) to any other creditor or party in interest.

7. **DIP Liens.** As security for the DIP Obligations, and subject to the Carve-Out (as defined below), effective and perfected upon the date of this Final Order and without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the DIP Lender of any Collateral (as defined herein), the following security interests and liens are hereby granted by the Debtor to DIP Lender (all property identified in clauses (a), (b), and (c) below being collectively referred to as the “**Collateral**”, and all such liens and security interests granted to the DIP Lender, pursuant to this Final Order and the DIP Documents, the “**DIP Liens**”):

(a) **First Lien On Unencumbered Property.** Pursuant to section 364(c)(2) of the Bankruptcy Code, the DIP Lender is hereby granted a valid, binding, continuing, enforceable, fully-perfected first priority senior lien on, and security interest in, all tangible and intangible prepetition and postpetition property of the Debtors other than Avoidance Actions, whether existing on or as of the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to valid, perfected, enforceable and unavoidable liens or are not subject to valid,

enforceable and unavoidable liens perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (collectively, the “**Unencumbered Property**”), including without limitation, any and all unencumbered cash, cryptocurrency, accounts receivable, other rights to payment, inventory, general intangibles, contracts, documents, instruments, securities, chattel paper, owned real estate, real property leaseholds, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, tradenames, rights under license agreements and other intellectual property, wherever located, and the proceeds, products, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, of all of the foregoing; and

(b) First Priority Priming Liens on Encumbered Property. Pursuant to section 364(d)(1) of the Bankruptcy Code, the DIP Lender is hereby granted a valid, binding, continuing, enforceable, automatically perfected, non-avoidable, security interest in all tangible and intangible prepetition and postpetition property of the Debtors other than Avoidance Actions, including without limitation, any and all encumbered cash, cryptocurrency, accounts receivable, other rights to payment, inventory, general intangibles, contracts, documents, instruments, securities, chattel paper, owned real estate, real property leaseholds, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, tradenames, rights under license agreements and other intellectual property, wherever located, and the proceeds, products, rents and profits thereof, whether now existing or hereafter acquired (the “**DIP Priming Lien**”). The DIP Priming Lien is senior in priority and superior to any security, mortgage, collateral interest, lien, claim or interest to or on, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, all valid, enforceable and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(c) For the avoidance of doubt, any recovery on account of the DIP Liens shall be paid (i) first, from Cash, (ii) second, from proceeds of Collateral other than Litigation Claims; and (iii) third, from Litigation Claims.

^{8.} *Adequate Protection.* As adequate protection for and to the extent of any diminution

1 in the value of any prepetition lender's collateral resulting from, among other things, the incurrence
2 of the DIP Obligations, and the granting of the DIP Liens, such prepetition lender is hereby granted
3 (in each case subject and subordinate to the DIP Liens, the DIP Superpriority Claims and the Carve-
4 Out) the following adequate protection (collectively, the "**Adequate Protection Obligations**"):

5 (a) Adequate Protection Liens. Solely to the extent of any diminution of value to
6 the prepetition lender's collateral, such prepetition lender is hereby granted (effective and
7 perfected upon the date of this Final Order and without the necessity of execution by the
8 Debtors of mortgages, security agreements, pledge agreements, financing statements and/or
9 other agreements or instruments) valid, perfected, postpetition security interests and liens (the
10 "**Replacement Liens**") in and on all of the prepetition lender's collateral, *provided, however,*
11 that the Replacement Liens shall only be and remain subject and subordinate to (i) the DIP
12 Liens and/or payment of any DIP Obligations on account thereof and (ii) the Carve-Out.

13 (b) Adequate Protection Superpriority Claims. As further adequate protection for
14 and solely to the extent of diminution of value of the prepetition lender's collateral, such prepetition
15 lender is hereby granted a superpriority claim with priority over all administrative expense claims and
16 unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind
17 or nature whatsoever, including, without limitation, administrative expenses of the kind specified in
18 or ordered pursuant to sections 105, 326, 328, 503(b), 506(c), 507(a), 507(b), 546(c), 552(b), 726,
19 1113 and 1114 and any other provision of the Bankruptcy Code (the "**Adequate Protection**
20 **Superpriority Claim**"), which allowed Adequate Protection Superpriority Claim shall be payable
21 from and have recourse to all of the prepetition lender's collateral and all proceeds thereof. The
22 Adequate Protection Superpriority Claim shall be subject and subordinate only to the DIP
23 Superpriority Claims and the Carve-Out.

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1 9. *Events of Default.* The occurrence of any of the following events, unless waived in
2 writing in accordance with the DIP Documents, shall constitute an “Event of Default”: (a) the failure
3 of the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or
4 obligations under this Final Order; (b) the Debtors seeks any modification or extension of this Final
5 Order without the consent of the DIP Lender; (c) any application is filed by the Debtors for the
6 approval of (or an order is entered by the Court approving) any claim arising under section 507(b)
7 of the Bankruptcy Code or otherwise, or any lien in the Chapter 11 Cases, which is *pari passu* with
8 or senior to the DIP Obligations or the DIP Liens; (d) the (i) commencement of any action by the
9 Debtors or (ii) support by the Debtors of the commencement of any action by any other party-in-
10 interest with standing against any of the DIP Lender to subordinate or avoid any liens made in
11 connection with the DIP Documents or to avoid any obligations incurred in connection with the DIP
12 Documents; (e) any order shall be entered granting relief from the stay arising under section 362 of
13 the Bankruptcy Code to the holder or holders of any security interest, lien or right of setoff to permit
14 foreclosure (or the granting of a deed in lieu of foreclosure or similar instrument), possession, set-
15 off or any similar remedy with respect to any Collateral; (f) the Debtors shall assert in any pleading
16 filed in any court that any material provision of this Final Order or the Final Order is not valid and
17 binding for any reason; or (g) the occurrence of an “Event of Default” under the DIP Credit
18 Agreement.

19 10. *Remedies after Event of Default.* Upon the occurrence and during the continuation
20 of an Event of Default and notwithstanding the provisions of section 362 of the Bankruptcy Code,
21 but subject to the expiration of the Remedies Notice Period (as defined herein), the DIP Lender, in its
22 discretion, may declare (a) all DIP Obligations owing under the DIP Documents to be immediately
23 due and payable, (b) the termination, reduction or restriction of any further commitment to extend
24 credit to the Debtor to the extent any such commitment remains, (c) the termination of the DIP
25 Financing and the DIP Documents as to any future liability or obligation of the DIP Lender, but
26 without affecting any of the DIP Liens or the DIP Obligations, (d) that the Carve-Out has been
27 triggered through the delivery of written notice, (e) the termination, reduction or restriction on the
28 ability of the Debtors to use Cash Collateral, and (f) the imposition of the default rate of interest set

1 forth in the DIP Credit Agreement (any of the foregoing shall be referred to as a “**Termination**
 2 **Declaration**”). The Termination Declaration shall be given by electronic mail or facsimile (or other
 3 electronic means) to counsel to the Debtors, counsel for the official committee of unsecured creditors
 4 (the “**Committee**”), and the U.S. Trustee and filed on docket of the Chapter 11 Cases (and the earliest
 5 date any such Termination Declaration is made shall be referred to herein as the “**Termination**
 6 **Declaration Date**”).

7 11. Any automatic stay otherwise applicable to the DIP Lender is hereby modified so that
 8 five (5) business days after the Termination Declaration Date (such five (5) business day period, the
 9 “**Remedies Notice Period**”) the DIP Lender shall be entitled to immediately exercise its rights and
 10 remedies in accordance with the DIP Documents and/or this Final Order, as the case may be, and
 11 shall be permitted to satisfy the DIP Obligations, the DIP Superpriority Claim and the DIP Liens in
 12 each case subject to the Carve-Out (as defined below). During the Remedies Notice Period (A) the
 13 Debtors may use Cash Collateral solely to pay payroll and other expenses critical to keep the business
 14 of the Debtor operating in accordance with the Budget, and (B) the Debtors or the Committee shall
 15 be entitled to seek an emergency hearing before the Court, within the Remedies Notice Period, for
 16 the purpose of contesting whether a Termination Event has occurred and/or is not continuing. Unless
 17 the Court determines otherwise during the Remedies Notice Period, the automatic stay, as to the DIP
 18 Lender, shall automatically be terminated at the end of the Remedies Notice Period without further
 19 notice or order. Upon expiration of the Remedies Notice Period, the DIP Lender shall be permitted to
 20 exercise all remedies set forth herein and in the DIP Documents, and as otherwise available at law
 21 without further order of or application or motion to the Court.

22 12. *Limitation on Charging Expenses Against Collateral.* Notwithstanding anything to
 23 the contrary contained herein, no costs or expenses of administration of the Chapter 11 Cases or any
 24 future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings
 25 under the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to
 26 section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written
 27 consent of the DIP Lender and no such consent shall be implied from any other action, inaction, or
 28 acquiescence by the DIP Lender, and nothing contained in this Final Order shall be deemed to be a

1 consent by the DIP Lender to any charge, lien, assessment or claim against the Collateral under
 2 section 506(c) of the Bankruptcy Code or otherwise.

3 13. *Carve-Out.* The DIP Superpriority Claims and DIP Liens granted to the DIP Lender,
 4 and the Adequate Protection Superpriority Claims and Adequate Protection Liens granted pursuant
 5 to this Final Order shall be junior and subordinate to (a) all fees required to be paid by the Debtors to the
 6 Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a), (b) all fees due the Clerk of the
 7 Court, (c) the allowed fees and disbursements as may be awarded to the professionals of the Debtor
 8 and the Committee (the “**Estate Professionals**”) from time to time pursuant to Bankruptcy Code §
 9 330, in the aggregate amount set forth in the Budget and only to the extent such fees were incurred
 10 prior to an Event of Default but not yet paid, and (d) up to \$100,000 in aggregate fees and expenses
 11 incurred by the Estate Professionals following an Event of Default (collectively, the “**Carve-Out**”).

12 14. *Payments Free and Clear.* Any and all payments or proceeds remitted to the DIP
 13 Lender pursuant to the provisions of this Final Order or any subsequent order of this Court shall be
 14 received free and clear of any claim, charge, assessment or other liability, including without
 15 limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c)
 16 (whether asserted or assessed by, through or on behalf of the Debtors) or 552(b) of the Bankruptcy
 17 Code.

18 15. *Perfection of DIP Liens.*

19 (a) The DIP Lender is hereby authorized, but not required, to file or record
 20 financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar
 21 instruments in any jurisdiction, or take possession of or control over, or take any other action in order
 22 to validate and perfect the liens and security interests granted to them hereunder. Whether or not the
 23 DIP Lender shall, in its sole discretion, choose to file such financing statements, trademark filings,
 24 copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control
 25 over, or otherwise confirm perfection of the liens and security interests granted to it hereunder, such
 26 liens and security interests shall be deemed valid, perfected, allowed, enforceable, unavoidable and
 27 not subject to challenge, dispute or subordination at the time and on the date of entry of this Final
 28 Order. The Debtors shall execute and deliver to the DIP Lender, as the case may be, all such

1 agreements, financing statements, instruments and other documents as the DIP Lender may
 2 reasonably request to more fully evidence, confirm, validate, perfect, preserve and enforce the DIP
 3 Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

4 (b) A certified copy of this Final Order may, in the discretion of the DIP Lender,
 5 be filed with or recorded in filing or recording offices in addition to or in lieu of such financing
 6 statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby
 7 authorized to accept such certified copy of this Final Order for filing and recording.

8 (c) Any provision of any lease or other license, contract or other agreement that
 9 requires the consent or approval of one or more landlords or other parties, or requires the payment of
 10 any fees or obligations to any governmental entity, in order for the Debtors to pledge, grant, sell,
 11 assign or otherwise transfer any such interest or the proceeds thereof or other Collateral, is hereby
 12 and shall be deemed to be inconsistent with the provisions of the Bankruptcy Code. Any such
 13 provision shall have no force and effect with respect to the transactions granting the DIP Lender a
 14 security interest in and lien on such interest or the proceeds of any assignment and/or sale thereof by
 15 the Debtors in favor of the DIP Lender in accordance with the terms of the DIP Documents and this
 16 Final Order.

17 16. *Reservation of Certain Third-Party Rights and Bar of Challenges and Claims.*

18 (a) Upon entry of this Final Order, the Debtors' and the DIP Lender's
 19 acknowledgements, agreements and stipulations set forth above (the "Stipulations") shall be
 20 binding upon the DIP Lender and the Debtors in all circumstances and for all purposes.

21 (b) The Stipulations shall be binding upon each other party in interest,
 22 including the Committee and any successor to the Debtors (including, without limitation, any
 23 chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors), if any.

24 17. *Preservation of Rights Granted Under the Order.*

25 (a) Subject to the Carve-Out (as defined in paragraph 14 above), no claim
 26 or lien having a priority senior to or *pari passu* with those granted by this Final Order or the
 27 DIP Documents to the DIP Lender shall be granted or allowed while any portion of the DIP
 28 Obligations (or any refinancing thereof) remain outstanding and the Commitment (as defined

1 in the DIP Note) has not been terminated, and the DIP Liens shall not be subject or junior to
2 any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates
3 under section 551 of the Bankruptcy Code or subordinated to or made *pari passu* with any other
4 lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

5 (b) Unless all DIP Obligations shall have been indefeasibly paid in full in
6 cash and the Commitment shall have been terminated (i) the Debtors shall not seek, and it shall
7 constitute an immediate Event of Default under the DIP Note if the Debtors seek, or if there is
8 entered, any modification of this Final Order without the prior written consent of the DIP
9 Lender, and no such consent shall be implied by any other action, inaction or acquiescence by
10 the DIP Lender, or (ii) it shall constitute an immediate Event of Default under the DIP Note if
11 any order is entered converting or dismissing the Chapter 11 Cases. If an order dismissing the
12 Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time
13 entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy
14 Code) that (w) the DIP Superpriority Claims, the DIP Liens, the Adequate Protection
15 Superpriority Claims and the Replacement Liens shall continue in full force and effect and shall
16 maintain their priorities as provided in this Final Order until all DIP Obligations and Adequate
17 Protection Obligations shall have been indefeasibly paid in full in cash, and the Commitment
18 shall have been terminated, (x) such DIP Superpriority Claims, DIP Liens, Adequate Protection
19 Superpriority Claims and Replacement Liens shall, notwithstanding such dismissal, remain
20 binding on all parties in interest, (y) the other rights granted by this Final Order shall not be
21 affected, and (z) this Court shall retain jurisdiction, notwithstanding such dismissal, for the
22 purposes of enforcing the claims, liens and security interests referred to in this paragraph and
23 otherwise in this Final Order.

24 (c) If any or all of the provisions of this Final Order are hereafter reversed,
25 modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (i) the
26 validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations
27 incurred prior to the actual receipt of written notice by the DIP Lender of the effective date of
28 such reversal, stay, modification or vacation, as applicable, or (ii) the validity, priority or

enforceability of the DIP Liens or the Replacement Liens. Notwithstanding any such reversal, stay, modification or vacation, any DIP Obligations or Adequate Protection Obligations incurred by the Debtor to the DIP Lender prior to the actual receipt of written notice by the DIP Lender of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Final Order, and the DIP Lender shall be entitled to all of the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Final Order and pursuant to the DIP Documents with respect to all DIP Obligations and Adequate Protection Obligations.

(d) Except as expressly provided in this Final Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Superpriority Claims, the Replacement Liens and all other rights and remedies of the DIP Lender granted by the provisions of this Final Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing the Chapter 11 Cases, or (ii) the entry of an order confirming a plan of reorganization for the Debtors and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Final Order and the DIP Documents shall continue in the Chapter 11 Cases, or in any superseding chapter 7 case under the Bankruptcy Code, and the DIP Liens, the DIP Obligations, the DIP Superpriority Claims, the Replacement Liens, the Adequate Protection Obligations, the Adequate Protection Superpriority Claims and all other rights and remedies of the DIP Lender granted by the provisions of this Final Order and the DIP Documents shall continue in full force and effect until all DIP Obligations and Adequate Protection Obligations are indefeasibly paid in full in cash, and the Commitment has been terminated.

18. *Limitation on Use of DIP Financing Proceeds and Collateral.* The Debtors shall use the proceeds of the DIP Financing solely as provided in this Final Order and in the DIP Documents (including, but not limited to, the Budget). Notwithstanding anything herein or in any other order of this Court to the contrary, no Loans under the DIP Note may be used (a) for professional fees and

1 expenses incurred for any litigation or threatened litigation (whether by contested matter, adversary
2 proceeding or otherwise) against the DIP Lender or for the purpose of objecting to or challenging the
3 validity, perfection, enforceability, extent or priority of any claim, lien or security interest held or
4 asserted by the DIP Lender or asserting any defense, claim, cause of action, counterclaim, or offset
5 with respect to the DIP Obligations or the security interests in or liens on the Collateral or against the
6 DIP Lender or its agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or
7 advisors, (b) to prevent, hinder or otherwise delay the DIP Lender's assertion, enforcement or
8 realization on the Collateral in accordance with the DIP Documents or this Final Order, (c) to seek to
9 modify any of the rights granted to the DIP Lender under this Final Order or under the DIP
10 Documents, in this case without the DIP Lender's prior written consent, which may be given or
11 withheld by the DIP Lender in the exercise of its respective sole discretion, or (d) pay any amount on
12 account of any claims arising prior to the Petition Date without the DIP Lender's prior written consent,
13 which may be given or withheld by the DIP Lender in the exercise of its respective sole discretion,
14 unless such payments are (i) approved by an order of this Court and (ii) permitted under the DIP
15 Documents (including, but not limited to, the Budget).

16 19. *Lender's Fees and Expenses.* Provided that the Closing occurs, the Debtors are
17 authorized and directed to pay all reasonable and documented out-of-pocket expenses of the DIP
18 Lender incurred in connection with the DIP Financing and the preparation and negotiation of the DIP
19 Documents, as provided in the DIP Documents, including without limitation, legal, accounting,
20 collateral examination, monitoring and appraisal fees, financial advisory fees, fees and expenses of
21 other consultants, and indemnification and reimbursement of fees and expenses (collectively, the
22 **DIP Negotiation Expenses**). Payment of all such DIP Negotiation Expenses shall not be subject
23 to allowance by the Court. Professionals for the DIP Lender shall not be required to comply with the
24 U.S. Trustee fee guidelines; *provided, however,* that on or before receiving payment or reimbursement
25 after the Petition Date for any professional fees incurred by the DIP Lender pursuant to the DIP
26 Documents or this Final Order, the DIP Lender shall provide a summary fee statement along with a
27 summary of tasks performed by all professionals during such period (such statement, a **"Fee**
28 **Statement**) to the U.S. Trustee and counsel for the Committee contemporaneously with the delivery

1 thereof to the Debtors. The Fee Statement shall not be required to comply with any particular format,
2 may be in summary form only, but must at a minimum include a general, brief description of the
3 nature of the matters worked on, a list of the professionals who worked on the matter, their hourly
4 rate (if such professionals bill at an hourly rate), and the number of hours each professional billed
5 and, with respect to the invoices of law firms; *provided*, that the Debtors, the U.S. Trustee, and the
6 Committee reserve the right to seek that copies of such invoices containing the detailed time entries
7 of the applicable professional be provided to such party (and each applicable professional reserves all
8 rights to object to such request and to redact privileged, confidential or sensitive information from
9 any information provided to such parties). The Debtor, the U.S. Trustee, or the Committee shall have
10 ten (10) days from the date of delivery of a Fee Statement (the “**Fee Review Period**”) within which
11 to deliver an objection (a “**Fee Objection**”) to such payment in writing (email shall suffice) to the
12 applicable professional, which Fee Objection will be limited to the issue of the reasonableness of such
13 professionals’ fees, costs, and expenses. The Debtors, the U.S. Trustee, and the Committee shall be
14 deemed to have waived any right to object to any fees, costs, or expenses not subject to a Fee
15 Objection delivered within the Fee Review Period. Upon the expiration of the Fee Review Period
16 and in the absence of any objection by the Debtor, the U.S. Trustee, or the Committee, the Debtor
17 shall promptly, and in any event within five (5) business days, pay such invoice, without the need for
18 further application to or order of the Court. In the event that, within the Fee Review Period, the
19 Debtors, the U.S. Trustee, or the Committee delivers a Fee Objection with respect to a particular
20 invoice, the Debtor shall promptly, and in any event within five (5) business days, pay the fees, costs,
21 and expenses not subject to the Fee Objection, without the need for further application to or order of
22 the Court. The Court retains jurisdiction to resolve any Fee Objections that are raised and not
23 otherwise resolved. The Debtors shall promptly, and in any event within five (5) business days, pay
24 all fees, costs, and expenses subject to a Fee Objection that are ultimately allowed by a final, non-
25 appealable order resolving such Fee Objection, or pursuant to a consensual resolution of the Fee
26 Objection reached by the DIP Lender and the party timely submitting such Fee Objection. All unpaid
27 fees, costs, expenses, and charges of the DIP Lender that have not been disallowed by this Court on
28 the basis of a timely delivered Fee Objection shall constitute DIP Obligations and shall be secured by

1 the Collateral.

2 20. *Exculpation.* Nothing in this Final Order, the DIP Documents, or any other documents
 3 related to these transactions shall in any way be construed or interpreted to impose or allow the
 4 imposition upon the DIP Lender any liability for any claims arising from the prepetition or
 5 postpetition activities of the Debtors in the operation of its business or maintenance of assets, or in
 6 connection with its restructuring and sale efforts. So long as the DIP Lender complies with its
 7 obligations under the DIP Documents and its obligations, if any, under applicable law (including the
 8 Bankruptcy Code), (a) the DIP Lender shall not, in any way or manner, be liable or responsible for
 9 (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner
 10 or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any
 11 carrier, servicer, bailee, custodian, forwarding agency or other person, and (b) all risk of loss, damage
 12 or destruction of the Collateral shall be borne by the Debtor.

13 21. *Order Governs.* In the event of any inconsistency between the provisions of this Final
 14 Order and the DIP Documents, the provisions of this Final Order shall govern.

15 22. *Retention of Jurisdiction.* The Bankruptcy Court shall retain jurisdiction to enforce
 16 the provisions of this Final Order, and this retention of jurisdiction shall survive the confirmation and
 17 consummation of any chapter 11 plan for the Debtors notwithstanding the terms or provisions of any
 18 such chapter 11 plan or any order confirming any such chapter 11 plan.

19 23. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of
 20 this Final Order, including all findings herein, shall be binding upon all parties in interest in the
 21 Chapter 11 Cases, including without limitation, the DIP Lender, the Debtors and their respective
 22 successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected
 23 for the estate of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code,
 24 or any other fiduciary appointed as a legal representative of the Debtors or with respect to the property
 25 of the estate of the Debtors) and shall inure to the benefit of the DIP Lender and the Debtor and their
 26 respective successors and assigns, *provided* that the DIP Lender shall have no obligation to extend
 27 any financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for
 28 the estate of the Debtors.

1 24. *Limitation of Liability.* In determining to make any loan or other extension of credit
 2 under the DIP Note, or in exercising any rights or remedies as and when permitted pursuant to the
 3 Final Order, this Final Order or the DIP Documents, the DIP Lender shall not (i) be deemed to be in
 4 “control” of the operations of the Debtor, (ii) owe any fiduciary duty to the Debtors, its respective
 5 creditors, shareholders or estate, and (iii) be deemed to be acting as a “Responsible Person” or
 6 “Owner” or “Operator” with respect to the operation or management of the Debtor (as such terms or
 7 similar terms are used in the United States Comprehensive Environmental Response, Compensation
 8 and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

9 25. *Credit Bid.* The DIP Lender shall have the unqualified right to credit bid all or any
 10 portion of the outstanding DIP Obligations in any sale of the Collateral under or pursuant to (i) section
 11 363 of the Bankruptcy Code, (ii) a plan of reorganization or plan of liquidation under section 1129 of
 12 the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for the Debtor under section
 13 725 of the Bankruptcy Code; *provided, however,* that the Committee shall be permitted to object to
 14 such credit bid for “cause.” For purposes of this paragraph 26, “cause” shall mean: (A) the DIP
 15 Lender is hereafter determined by further order of this Court to be an “insider” of the Debtor; or (B)
 16 the DIP Lender’s collusion in connection with any sale or plan of reorganization that is to be
 17 implemented through a sale of the Collateral.

18 26. *Effectiveness.* This Final Order shall constitute findings of fact and conclusions of law
 19 and shall take effect and be fully enforceable immediately upon entry hereof. Notwithstanding
 20 Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules or any other
 21 Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be
 22 immediately effective and enforceable upon its entry and there shall be no stay of execution or
 23 effectiveness of this Final Order.

24 27. *Headings.* Section headings used herein are for convenience only and are not to affect
 25 the construction of or to be taken into consideration in interpreting this Final Order.

26 **IT IS SO ORDERED.**

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2 Prepared and respectfully submitted by:

3 **SCHWARTZ LAW, PLLC**

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5 By: /s/

6 Samuel A. Schwartz, Esq.

7 Gabrielle A. Hamm, Esq.

601 East Bridger Avenue

7 Las Vegas, NV 89101

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Proposed Attorneys for the Debtors

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1 **LR 9021 CERTIFICATION**

2 In accordance with LR 9021, counsel submitting this document certifies that the order
3 accurately reflects the court's ruling and that:

4 The court has waived the requirement set forth in LR 9021(b)(1).

5 No party appeared at the hearing or filed an objection to the motion.

6 I have delivered a copy of this proposed order to all counsel and any unrepresented
7 parties who appeared at the hearing, except those as to whom review was waived on the
8 record at the hearing, and each has approved or disapproved the order, or failed to respond,
9 as indicated below:

10 I certify that this is a case under Chapter 7 or 13, that I have served a copy of this
11 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or
12 content of this order.

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